

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

ERIC X. RAMBERT, et al.,)	
Plaintiffs)	C.A. No. 16-72 Erie
)	
v.)	District Judge Rothstein
)	Magistrate Judge Baxter
JOHN E. WETZEL, et al.,)	
Defendants.)	

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

I. RECOMMENDATION

It is respectfully recommended that Michael Bundy and Jason Grisby be dismissed as Plaintiffs in this case for failure to prosecute.

II. REPORT

On April 4, 2016, the Clerk of Courts received a civil rights complaint filed by nine (9) inmates incarcerated at the State Correctional Institution at Forest in Marienville, Pennsylvania: Eric X. Rambert; Anthony R. Johnson; Michael Bundy; John Passmore; Demetrius Bailey; Jason Grisby; Michael Lewis; Sawn Pew, a/k/a Alfonso Pew; and E. Garcia; however, only Plaintiff Rambert filed a motion to proceed *in forma pauperis* [ECF No. 1].¹ As a result, this Court issued a Show Cause Order, dated April 6, 2016, directing each named Plaintiff, other than Plaintiff Rambert, to either pay the filing fee of \$ 400.00 to the Clerk of Courts or file a motion to proceed *in forma pauperis* with an accompanying institutional account statement, on or before April 26, 2016, or suffer dismissal from this case for failure to prosecute. [ECF No. 2].

¹
Plaintiff Garrett Cessna was added to the Complaint on April 20, 2016 [ECF No. 7], and has since filed a motion to

To date, Plaintiffs Michael Bundy and Jason Grisby have failed to comply with this Order.

The United States Court of Appeals for the Third Circuit has set out a six-factor balancing test to guide a court in determining whether dismissal of a case is appropriate. Poulis v. State Farm Fire and Casualty Co., 747 F.2d 863 (3d Cir. 1984). The court must consider: 1) the extent of the party's personal responsibility; 2) the prejudice to the adversary caused by the failure to meet scheduling orders and respond to discovery; 3) a history of dilatoriness; 4) whether the conduct of the party or attorney was willful or in bad faith; 5) the effectiveness of sanctions other than dismissal, which entails an analysis of alternative sanctions; and 6) the meritoriousness of the claim or defense. Id. at 868. Not all of the six factors need to weigh in favor of dismissal before dismissal is warranted. Hicks v. Feeney, 850 F.2d 152 (3d Cir. 1988).

Applying the Poulis factors to the present matter, this Court recommends that the two named Plaintiffs who failed to comply with this Court's Order be dismissed from this case. Since the filing of this matter, these Plaintiffs have taken none of the necessary first steps to prosecute this case. Further, said Plaintiffs have failed to comply with an order of this Court. Plaintiffs are proceeding *pro se* and therefore bear all of the responsibility for any failure in the prosecution of their claims. Alternative sanctions, such as monetary penalties, are inappropriate with indigent parties. Although Plaintiffs' allegations may state a claim upon which relief could be ultimately be granted, the merits of the claims are impossible to determine at this early stage of the proceedings.

III CONCLUSION

For the foregoing reasons, it is respectfully recommended that Plaintiffs Michael Bundy

and Jason Grisby be dismissed as Plaintiffs in this case for failure to prosecute.

In accordance with the Federal Magistrates Act, 28 U.S.C. § 636(b)(1), and Fed.R.Civ.P. 72(b)(2), the parties are allowed fourteen (14) days from the date of service to file written objections to this report and recommendation. Any party opposing the objections shall have fourteen (14) days from the date of service of objections to respond thereto. Failure to file objections will waive the right to appeal. Brightwell v. Lehman, 637 F. 3d 187, 193 n. 7 (3d Cir. 2011).

s/Susan Paradise Baxter
SUSAN PARADISE BAXTER
United States Magistrate Judge

Dated: May 27, 2016

cc: The Honorable Barbara Rothstein
United States District Judge